

138 FERC ¶ 61,021  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER12-427-000

ORDER ON TARIFF REVISIONS AND TRANSMISSION RATE INCENTIVE

(Issued January 13, 2012)

1. On November 16, 2011, pursuant to sections 205 and 219 of the Federal Power Act (FPA)<sup>1</sup> and Order No. 679,<sup>2</sup> Midwest Independent Transmission System Operator, Inc. (MISO) filed, on behalf of Central Minnesota Municipal Power Agency (CMMMPA) and Midwest Municipal Transmission Group (MMTG) (collectively, Applicants), a request to allow CMMMPA to establish a regulatory asset account to include its pre-commercial costs and certain transmission-related expenses related to CMMMPA's investment in the CapX2020<sup>3</sup> Twin Cities to Brookings County transmission project (Brookings Project).<sup>4</sup> In addition, MISO proposed revisions to its Open Access

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<sup>1</sup> 16 U.S.C. §§ 824d; 824s (2006).

<sup>2</sup> See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>3</sup> The Applicants are participating in a comprehensive regional planning initiative by eleven utilities in the region known as the Transmission Capacity Expansion Initiative by the Year 2020 (CapX2020). Applicants Filing, Transmittal Letter at 5 n.2; *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at P 1 n.3 (2011). The Applicants state that CMMMPA is investing in the Brookings Project on behalf of its own members and on behalf of MMTG's members. Applicants Filing, Transmittal Letter at 5.

<sup>4</sup> The Brookings Project is a 240-mile, 345 kV transmission line that will run from Brookings County, South Dakota, to the Southeast Twin Cities in Minnesota, as well as a 10-mile, 230 kV line from a new Hazel Creek substation to a substation in Granite Falls,

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Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to modify its Attachment O-CMMPA to implement the requested regulatory asset account incentive, and to add a new Attachment MM-CMMPA to allow CMMPA to collect its annual transmission revenue requirement (ATRR) if the Brookings Project is treated as a Multi Value Project (MVP). In this order, we conditionally accept MISO's Tariff revisions and request for regulatory asset incentive for filing, effective January 16, 2012. We also direct MISO to submit a compliance filing within 30 days of the date of this order, as discussed below.

## **I. Background**

2. On December 31, 2007, as amended on January 25, 2010 and January 11, 2011, in Docket No. EL08-32-000, *et al.*, the Applicants filed a petition for a declaratory order seeking approval of certain rate incentives for their investment in the Brookings Project, which the Commission conditionally granted.<sup>5</sup> To implement these incentives, on January 19, 2011, as amended on January 21, 2011, March 4, 2011 and March 16, 2011, in Docket No. ER11-2700-000, *et al.*, MISO submitted on behalf of the Applicants proposed revisions to its Tariff to include CMMPA's Attachment O formula rate under MISO's Tariff. Specifically, the proposal included revisions to Schedules 7, 8, and 9, and a new Attachment O-CMMPA, establishing a revenue requirement and rates for CMMPA in connection with CMMPA's potential investment in the Brookings Project. The Commission conditionally accepted the proposed Tariff revisions in part, and rejected other aspects of the filing, and established hearing and settlement proceedings. Of particular relevance to this proceeding, the Commission rejected CMMPA's proposed Attachment O variance to set the transmission plant allocator to one, finding that CMMPA has no in-service transmission assets and, absent a modification to the *pro forma* Attachment O formula rate template, CMMPA will have a transmission plant allocator of zero.<sup>6</sup>

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Minnesota. *See Cent. Minn. Mun. Power Agency & Midwest Mun. Transmission Group*, 134 FERC ¶ 61,115 (2011) (Incentives Declaratory Order).

<sup>5</sup> *Id.*

<sup>6</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,131, at P 38 (2011) (May 13 Order). The Commission stated that there is currently no mechanism by which CMMPA can recover operations and maintenance (O&M) and administrative and general (A&G) expenses; however, the Commission noted that other entities faced a similar circumstance as the one faced by CMMPA in which case the Commission accepted a proposed regulatory asset account to defer such expenses for recovery over a ten-year period once construction commenced and there is an approved tariff mechanism

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3. On June 13, 2011, the Applicants submitted a request for rehearing or, in the alternative, clarification of the May 13 Order's determination that CMMPA must apply a transmission plant allocator of zero, thereby, disallowing recovery of O&M and A&G costs. Subsequently, the Applicants withdrew their request for rehearing, but they maintained their alternative request for clarification. In their withdrawal of the request for rehearing, the Applicants stated that CMMPA will be able to finance its participation in the Brookings Project through a regulatory asset account and, therefore, they no longer request rehearing of the May 13 Order regarding the transmission plant allocator. In the request for clarification, the Applicants requested that the Commission clarify that CMMPA may file to include in a regulatory asset account all of its disallowed O&M/A&G expenses, including the expenses that the Commission determined should be transferred from the construction work in progress (CWIP) account and including a return. The Applicants stated that they interpret the May 13 Order as authorizing CMMPA to file to establish a regulatory asset account and to charge all O&M/A&G costs that are non-recoverable through an alternative mechanism.

4. In the order on clarification, the Commission found that the Applicants are not barred from filing to establish a regulatory asset, and restated its standing policy that, in order for CMMPA to establish a regulatory asset, it must make a filing under section 205 of the FPA demonstrating, among other things, that the creation of the regulatory asset account is appropriate and identifying each of the costs that are to be included in the regulatory asset account. Further, CMMPA must propose and justify an effective date, amortization period, carrying charge, and accounting mechanisms for the regulatory asset. Finally, if regulatory asset treatment is granted, prior to any regulatory asset amounts being included in rates, CMMPA must demonstrate through a section 205 filing that the costs recorded as regulatory assets are just and reasonable in a separate section 205 filing.<sup>7</sup>

## **II. Notice of Filings and Responsive Pleadings**

5. Notice of the Applicants' Filing was published in the *Federal Register*, 76 Fed. Reg. 72,694 (2011), with interventions and comments due on or before December 7, 2011. On December 7, 2011, MISO Transmission Owners (MISO TOs)<sup>8</sup> filed a motion

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in place. *Id.* P 38 & n.49 (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 107-109 (2009), *reh'g denied*, 135 FERC ¶ 61,141 (2011)).

<sup>7</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,186, at P 8-9 (2011).

<sup>8</sup> MISO TOs for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a

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to intervene and comments. On December 10, 2011, the Applicants filed an answer to MISO TOs comments. On December 13, 2011, Consumers Energy Company filed a motion to intervene out-of-time.

### **III. Discussion**

#### **A. Procedural Matters**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>9</sup> the timely, unopposed motion to intervene of the MISO TOs serves to make them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,<sup>10</sup> we will grant Consumers Energy Company's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

7. Rule 213(a) of the Commission's Rules of Practice and Procedure<sup>11</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Applicants' answer because it has provided information that assisted us in our decision-making process.

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Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>9</sup> 18 C.F.R. § 385.214 (2011).

<sup>10</sup> *Id.* § 385.214(d).

<sup>11</sup> *Id.* § 385.213(a)(2) (2011).

**B. Regulatory Asset Incentive****1. Proposal**

8. The Applicants seek Commission approval for CMMPA to establish a regulatory asset account and certain proposed modifications to the Tariff. In the regulatory asset account, the Applicants propose to include CMMPA's: (1) pre-commercial expenses related to the Brookings Project, not included in CWIP, incurred from January 1, 2007 and continuing until CMMPA has transmission plant in-service; and (2) O&M and allocated A&G expenses, which the Applicants maintain CMMPA would otherwise include in its revenue requirement if CMMPA currently had transmission plant in-service, beginning on January 1, 2007 and continuing until it has transmission plant in-service.<sup>12</sup> The Applicants argue that they are currently unable to recover these expenses under the Tariff because CMMPA does not have transmission plant in-service and, therefore, have a transmission plant allocator of zero. The Applicants seek approval to include the categories of costs that are specified herein in CMMPA's regulatory asset account and to amortize the regulatory asset account balance containing these costs over five years after any part of the Brookings Project goes into service or after CMMPA has other in-service transmission assets.

9. In accordance with Commission requirements and prior to obtaining recovery of CMMPA's regulatory asset, the Applicants state that MISO (on behalf of the Applicants) will make a section 205 filing with the Commission to allow the Commission, MISO and other interested parties to verify the appropriateness of the amounts in the account. They state that this will ensure that incorporating CMMPA's ATRR in MISO rates results in just and reasonable rates.

10. In addition, the Applicants propose to apply a carrying charge on the amounts recorded in the regulatory asset account. The Applicants state that the carrying charge rate applied to the regulatory asset balance each month will be calculated annually based on a hypothetical capital structure of 50 percent debt and 50 percent equity ratio, which the Commission previously granted to the Applicants, and the previously approved MISO return on equity of 12.38 percent.<sup>13</sup> The Applicants request to apply the carrying charge on the balances in the regulatory asset account beginning on March 21, 2011, and continuing until the Brookings Project goes into service (and is included in rate base) or

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<sup>12</sup> Applicants Filing, Transmittal Letter at 9.

<sup>13</sup> *Id.*, Ex. CMM-2 (Blaine Test.) at 13.

until CMMPA has other eligible transmission plant in-service.<sup>14</sup> In support of the proposed date to begin applying the carrying charge, the Applicants argue that the March 21, 2011 date is appropriate because this is the effective date that the Commission established for CMMPA cost recovery under the May 13 Order and the regulatory asset account implements the May 13 Order. The Applicants further state that allowing this date, rather than upon approval of this incentive request, reflects the Commission's recognition that establishing a regulatory asset helps cure the inequity of CMMPA not being able to recover its expenses currently even though it incurs similar costs as other Brookings Project investors.<sup>15</sup> Finally, the Applicants propose to compound the carrying charges and accrue the balance to the regulatory asset account monthly until CMMPA has qualifying transmission investment in-service.<sup>16</sup>

11. Further, the Applicants state that they will include in the regulatory asset account costs incurred beginning January 1, 2007 (the year, according to the Applicants, that CMMPA decided to move forward with the Brookings Project, as well as the year CMMPA became a MISO transmission owner) through the actual in-service date for Phase 1 of the Brookings Project or any other date when CMMPA actually has eligible transmission plant in-service that qualifies it to charge expenses currently. The Applicants state that, at this time, the expected in-service date for Phase 1 of the Brookings Project is 2014 but this may be delayed depending on the outstanding risks of the project. CMMPA will accrue carrying costs monthly on the deferred cost balances including the balance of deferred carrying, after CMMPA has eligible in-service transmission plant. The Applicants propose to include the regulatory account balance (Account 182.3) in the "Adjustments to Rate Base" section of the Attachment O-CMMPA formula rate and amortize this balance over five years,<sup>17</sup> applying the same return calculation (using the 50-50 capital structure that the Commission previously approved) to the unamortized balance of the regulatory asset.<sup>18</sup> After CMMPA has

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<sup>14</sup> *Id.*, Ex. CMM-1 (Pardikes Test.) at 10. The Applicants state that, if CMMPA acquires transmission assets earlier than the in-service date for the Brookings Project, then it would have a positive transmission plant allocator and would begin amortization earlier. *Id.*, Transmittal Letter at 9.

<sup>15</sup> *Id.* at 10.

<sup>16</sup> Applicants Filing, Ex. CMM-2 at 4; *id.*, Transmittal Letter at 23 (citing *Green Power Express LP*, 127 FERC ¶ 61,031 at P 55).

<sup>17</sup> Applicants Filing, Ex. CMM-2 at 17.

<sup>18</sup> *Id.*, Ex. CMM-1 at 11.

transmission plant in service, all transmission costs other than CWIP and capitalizable plant costs will be expensed as they incurred, the carrying charges on the balance of the deferred costs in the regulatory asset will accrue from the effective date until the regulatory asset is included in rate base, these carrying charges will be compounded monthly and debited to FERC Account 182.3 and the carrying charges will be credited to FERC Account 407.4 as income for that period.<sup>19</sup>

**a. Pre-Commercial Expenses**

12. The Applicants propose to include all pre-commercial expenses associated with the Brookings Project in the regulatory asset account. The Applicants state that this includes, but is not limited to, legal and consulting costs that the Commission ruled should be classified as an expense into Account 923 (Outside Services Employed) and Account 928 (Regulatory Commission Expenses),<sup>20</sup> expenses directly related to development of upstream and downstream agreements for the Brookings Projects, and legal costs and efforts related to their analysis of sufficient capacity to issue tax-exempt bonds for the Brookings Project. The Applicants argue that this analysis must be done both at the project-based agency-level,<sup>21</sup> and for each project participant to ensure the each project-based agency and each project's bond(s) must be individually structured and reviewed to ensure compliance with tax-exempt guidelines and maintain tax-exempt status. The Applicants also propose to include consulting and financial advice costs related to structuring upcoming Brookings Project bonds. The Applicants state that expenses related to internal and external labor and travel expenses associated with the required analysis and communication to educate stakeholders, and participate in meetings and planning, should be included in the regulatory asset account as well. Lastly, the Applicants state that costs related to any non-income related taxes assessed to transmission investments prior to the Brookings Project going into service (e.g., property taxes) should be included as pre-commercial expenses not identified above and listed

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<sup>19</sup> *Id.*, Ex. CMM-2 at 4.

<sup>20</sup> *Id.*, Ex. CMM-1 at 30.

<sup>21</sup> CMMPA is a project-based agency and, thus, each project has its own unique set of participants with its own agreements and terms customized to each project. CMMPA members and MMTG members choose whether to participate in each project and costs are incurred with a specific project in mind, with each project and the group of participants being consider as the project-based agency.

under “Other pre-commercial expenses.” The Applicants maintain that approval of recovery of taxes other than income taxes is routine.<sup>22</sup>

**b. Transmission-Related Expenses**

13. The Applicants state that these expenses are similar to costs that are incurred by other Brookings Project owners and are included currently in their Attachment Os and charged to MISO network transmission customers, including CMMPA. The Applicants argue that, because the May 13 Order denied CMMPA’s request to recover these transmission-related expenses without having transmission plant in-service, the Commission should approve the request to include these expenses in its regulatory asset account. The Applicants state that these expenses are necessary costs of being a transmission owner and an investor in transmission infrastructure. The Applicants state that, in accordance with the standard methodology used in MISO’s *pro forma* Attachment O, all MISO transmission owners recover a portion of their A&G costs applying the wage/salary allocator. Accordingly, the Applicants propose to include this portion of costs in the regulatory asset account, as well. They argue that inclusion of allocated A&G costs is consistent with Commission precedent.<sup>23</sup>

**2. Comments**

14. MISO TOs state that, while they do not oppose the establishment of a regulatory asset account for CMMPA, they do oppose the Applicants’ request to reflect costs that would not otherwise be recoverable in rates if CMMPA had transmission plant in-service. Specifically, MISO TOs take issue with the Applicants’ proposal to include costs in the regulatory asset account that date back to January 1, 2007. MISO TOs state that CMMPA did not sign the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (MISO Transmission Owners Agreement) until July 26, 2007, its membership as a MISO transmission owner was not approved by the MISO Board of Directors until August 17, 2007,<sup>24</sup> and it was not integrated into MISO for rate purposes

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<sup>22</sup> Applicants Filing, Transmittal Letter at 22.

<sup>23</sup> *Id.* at 23 (citing *Green Power Express LP*, 127 FERC ¶ 61,031 at P 55).

<sup>24</sup> MISO TOs Comments at 6-7.

as a Transmission Owner until April 1, 2010.<sup>25</sup> Based on the dates of CMMPA's membership and integration in MISO, MISO TOs argue that the Applicants fail to justify why the start date for including CMMPA's costs in the proposed regulatory asset account should not be, at the earliest, August 17, 2007, the date of CMMPA's membership approval, or April 1, 2010, the date of CMMPA's integration.<sup>26</sup>

15. In addition, MISO TOs state that the Commission should make clear that any Commission approval or acceptance of the filing to establish a regulatory asset account is subject to the right of MISO transmission owners and other interested parties to challenge the inclusion of any specific costs when MISO, on behalf of the Applicants, makes a section 205 filing to include the costs recorded in the regulatory asset account in rates.<sup>27</sup>

### 3. Answer

16. In response to MISO TOs' arguments against allowing CMMPA to include its costs in the regulatory asset account beginning January 1, 2007, the Applicants argue that not allowing the recovery of these legitimate costs that other MISO transmission owners have recovered through rates would be unduly discriminatory and preferential, unjust and unreasonable, and contrary to the purpose of the FPA to promote necessary, new transmission investment regardless of ownership.<sup>28</sup> The Applicants maintain that CMMPA is entitled to recover its cost incurred as of January 1, 2007. The Applicants state that the Commission has consistently allowed applicants for a regulatory asset to begin accumulating expenses into the regulatory asset account beginning with either the formation of the company or the beginning of the transmission project. The Applicants further state that CMMPA, in fact, began incurring expenses for the Brookings Project

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<sup>25</sup> MISO TOs note that April 1, 2010 is the date that the municipals that CMMPA represents incorporated into MISO's transmission rates, and, MISO TOs argue, is the date CMMPA integrated into MISO for rate purposes as a Transmission Owner. *Id.* at 7 n.14.

<sup>26</sup> *Id.* at 6-8.

<sup>27</sup> *Id.* at 8-9 (citing *RITELine Ill., LLC*, 137 FERC ¶ 61,039, at P 98 (2011); *Ne. Transmission Development, LLC*, 135 FERC ¶ 61,244, at P 56 (2011); *Green Power Express, LP*, 127 FERC ¶ 61,031 at P 61).

<sup>28</sup> Applicants Answer at 3 (citing 16 U.S.C. §§ 824d, 824e, 824s(b)(1)).

beginning in late 2006 and maintain that the January 1, 2007 date is valid for CMMPA to begin accumulating its expenses.<sup>29</sup>

17. Contrary to MISO TOs' claims, the Applicants argue, among other things, that regional transmission organization (RTO) membership is not a pre-requisite to begin accumulating expenses into a regulatory asset account. The Applicants assert that the Commission has never required a company filing for a regulatory asset account to be a transmission owner prior to being able to accumulate expenses in the regulatory asset account. In fact, they state, the Commission has allowed applicants, such as Green Power Express LP and Central Transmission, LLC, to accumulate their expenses without being a transmission owner in an RTO.<sup>30</sup>

18. In addition, the Applicants argue that the date of CMMPA's member cities' integration into MISO is irrelevant, as is the date of CMMPA's MISO membership approval, because neither date relates to legitimate cost incurrences by CMMPA. The Applicants maintain that CMMPA, not its members, is the entity applying for the regulatory asset account and CMMPA will not include any municipal costs in the regulatory asset account. They assert that CMMPA's members are not conducting CMMPA planning and CMMPA's other activities that support the grid. Thus, the Applicants maintain that the integration of CMMPA's members has no relevance on whether CMMPA should be able to recover its costs in the Brookings Project through a regulatory asset.

19. To reduce regulatory uncertainty and ensure that only appropriate costs are placed in the regulatory asset account, the Applicants request that the Commission confirm the cost categories listed in the filing are "probable for recovery in rates in a different period."<sup>31</sup>

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<sup>29</sup> *Id.* at 6-8. While the Applicants state that CMMPA began incurring costs related to the Brookings Project at the end of 2006, they maintain that the January 1, 2007 cut-off date is appropriate and they do not request the ability to include the significant recoverable costs incurred in 2006. *Id.* at 6 & n.10.

<sup>30</sup> *Id.* at 8 (citing *Green Power Express LP*, 127 FERC ¶ 61,031 at P 54; *Cent. Transmission, LLC*, 135 FERC ¶ 61,145, at P 3, 4 (2011)).

<sup>31</sup> *Id.* at 22 (quoting *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 104 (2011)).

#### 4. Commission Determination

20. In the Incentives Declaratory Order, the Commission found that the Applicants met the section 219 requirement of the FPA for incentive rate treatment for the Brooking Project and that the Brookings Projects is not routine.<sup>32</sup> Thus, we restrict our discussion in this order to the nexus requirement of Order No. 679 and, specifically, whether the Applicants' request for a regulatory asset account is tailored to CMMPA's risks and challenges.<sup>33</sup>

21. We grant the Applicants' request for authorization to create the regulatory asset account, effective January 16, 2012, 60 days after filing as discussed further below. This will allow CMMPA to defer recovery of pre-commercial and transmission related expenses, as well as start-up and development costs, and, to the extent CMMPA has customers, to assess and recover those costs later. We find that the incentive is tailored to CMMPA's risks and challenges because this incentive will provide CMMPA with added up-front regulatory certainty and can reduce interest expense, improve coverage ratios, and facilitate the financing of the Brookings Project on good terms.

22. We also authorize the Applicants' request for CMMPA to accrue a carrying charge on the regulatory asset account beginning on January 16, 2012, and continuing until the regulatory asset is included in rate base. We authorize CMMPA to amortize the regulatory asset over 5 years, starting from the date it begins to recover the regulatory asset as part of the revenue requirement under its formula rate. Once CMMPA begins to recover the regulatory asset as part of the revenue requirement under its formula rate, CMMPA will earn a return on the unamortized balance of the regulatory asset and, therefore, CMMPA must stop accruing carrying charges on such regulatory asset.

23. While we authorize CMMPA to accrue a carrying charge, we reject the proposal for CMMPA to compound the carrying charge interest monthly. We find the monthly compounding of interest to be excessive. The appropriate carrying charge should not result in a higher amount of interest than is allowed for construction expenditures that accrue AFUDC. The Commission's requirements for AFUDC restrict the compounding of interest to no more frequent than semi-annual.<sup>34</sup> This is also consistent with the

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<sup>32</sup> 134 FERC ¶ 61,131.

<sup>33</sup> See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21.

<sup>34</sup> *Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D) to Provide for the Determination of Rate for Computing the Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports*, Order No. 561,

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Commission's approach in other cases where an applicant requests a carrying charge on a regulatory asset.<sup>35</sup> Accordingly, we order CMMPA to accrual of the carrying charge such that the compounding of interest occurs no more frequently than semi-annually.<sup>36</sup>

24. As discussed above, the Applicants request to apply the carrying charge on the balances in the regulatory asset account beginning on March 21, 2011. Consistent with prior precedent, CMMPA may apply the carrying charge, as authorized herein, beginning on the effective date of the regulatory asset account.<sup>37</sup> As further discussed below, the effective date of the regulatory asset account is January 16, 2012.

25. While we provide CMMPA with the ability to create the regulatory asset account to record Brookings Project pre-commercial operations and transmission-related expenses as a regulatory asset, CMMPA must make a section 205 filing to demonstrate that the expenses included in the regulatory asset account were prudently incurred and are just and reasonable.

26. We find MISO TOs' argument unavailing, in regards to basing the date for accruing costs for deferred recovery on the date of CMMPA's membership and integration in MISO. We also disagree that the Applicants failed to justify the proposed date to begin including CMMPA's costs in the regulatory asset account. Membership and integration in an RTO is not a requirement to establish a regulatory asset account pursuant to sections 205 and 219 of the FPA and Order No. 679, nor is it a requirement to allow applicants for a regulatory asset account to begin recording their costs associated

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57 FPC 608, 612 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978); *accord Trans-Elect NTD Path 15, LLC*, 117 FERC ¶ 61,214, at P 44-59 (2006), *reh'g denied*, 119 FERC ¶ 61,093 (2007).

<sup>35</sup> *See, e.g., Green Power Express LP*, 127 FERC ¶ 61,031 (accepting Green Power Express LP's proposal to compound the carrying charge interest semi-annually).

<sup>36</sup> In Order No. 561, the Commission's predecessor agency established a uniform formulary method for determining the maximum rates to use for computing AFUDC, stating: "We believe that a monthly compounding of AFUDC may result in excessive amounts capitalized since cash outlays for interest and dividends are not normally made on a monthly basis. We shall therefore permit compounding but no more frequently than semiannually." Order No. 561, 57 FPC at 612.

<sup>37</sup> *E.g., RITELine Ill., LLC*, 137 FERC ¶ 61,039 at 96; *Green Power Express LP*, 127 FERC ¶ 61,031 at P 60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 84 (2009).

with the transmission project in the regulatory asset account. Contrary to MISO TOs' argument, the Commission has permitted applicants for a regulatory asset account to begin recording such expenses in their regulatory asset account without membership and integration in an RTO.<sup>38</sup> Accordingly, we reject MISO TOs' argument and accept the Applicants proposed date of January 1, 2007 for accruing its costs associated with the Brookings Project for deferred recovery.

27. However, as discussed above, CMMPA must make a section 205 filing to include the costs recorded in the regulatory asset account in rates. At that time, MISO TOs and other interested parties, if they so choose, may raise issues as to any specific costs recorded in the regulatory asset account that CMMPA seeks to include in its rates and CMMPA must demonstrate that the costs were prudently incurred and are just and reasonable.

### **C. Tariff Revisions and Accounting Treatment**

#### **1. Proposal**

28. To implement the regulatory asset account incentive, the Applicants propose several changes to the Attachment O-CMMPA. First, the Applicants propose to remove Note KK. Because CMMPA will be using FERC Form No. 1 data instead of EIA Form 412 data, as originally contemplated, the Applicants state that Note KK, which explained the necessary work papers related to CMMPA audited financial statements, is no longer necessary.<sup>39</sup> Second, the Applicants are proposing to add two *pro forma* lines necessary to remove the Attachment MM ATRR and the Schedule 26-A revenue credits from the Attachment O-CMMPA formula. Specifically, the Applicants are adding line 30a on page 3 for the Attachment MM ATRR adjustment and line 36b on page 4 for transmission charges associated with Schedule 26-A.<sup>40</sup> In addition, the Applicants propose additional clean-up changes to the tariff as a result of current settlement

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<sup>38</sup> *E.g.*, *RITELine Ill., LLC*, 137 FERC ¶ 61,039 at 95; *Cent. Transmission, LLC*, 135 FERC ¶ 61,145, at P 3-4 (2011); *Green Power Express LP*, 127 FERC ¶ 61,031 at P 54.

<sup>39</sup> Applicants Filing, Ex. CMM-1 at 48.

<sup>40</sup> *Id.*, Ex. CMM-2 at 6.

discussions with MISO and discussions in settlement judge procedures that resulted from the May 13 Order.<sup>41</sup>

29. The Applicants also propose to add a new Attachment MM-CMMPA as a result of the Brookings Project being “conditional approved” as an MVP project pursuant to Schedule 26-A. According to the Applicants, the deviations from the *pro forma* Attachment MM are necessary to calculate and incorporate the rate incentives granted to CMMPA for the Brookings Project and implementing the incentives proposed in the current request for the establishment of a regulatory asset account.<sup>42</sup>

30. For accounting purposes, the Applicants propose to establish the regulatory asset account using a two-step approach. First, CMMPA will charge the costs subject to the deferral to Account 923, Outside Services Employed, or other operating expense account. Next, CMMPA will defer these costs by debiting Account 183.2 and crediting Account 407.4 Regulatory Credits. They propose to record carrying charges on the deferred amounts by debiting Account 182.3 and crediting Account 407.4. Once the transmission facilities are placed in-service, the Applicants propose to record the amortization of the deferred costs and related carrying charges over 5 years by debiting Account 566, Miscellaneous Transmission Expenses, and crediting Account 182.3. Finally, the Applicants propose to credit Account 421, Miscellaneous Non-operating Income, as the carrying charges are recovered in rates.<sup>43</sup>

## 2. Comments

31. MISO TOs aver that the Commission should require the Applicants to make certain modifications regarding Attachment O-CMMPA. First, MISO TOs state that the Applicants should modify Page 5, Note QQ for consistency with Note AA by adding the phrase “amounts unless authorized by FERC,” as a result Note QQ should read as follows: “Plant In Service, Accumulated Depreciation, and Depreciation Expense amounts exclude Asset Retirement Obligation amounts unless authorized by FERC.”<sup>44</sup>

32. MISO TOs also aver that the Commission should require the Applicants to change Attachment MM-CMMPA in several instances. First, they maintain that section 3(a)(xi)

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<sup>41</sup> *Id.*, Transmittal Letter at 2; *see also* May 13 Order, 135 FERC ¶ 61,131 at P 87-89.

<sup>42</sup> Applicants Filing, Ex. CMM-2 at 5-7.

<sup>43</sup> *Id.*, Ex. CMM-3.

<sup>44</sup> MISO TOs Comments at 10.

– the narrative description of the Annual Allocation Factor for Premium Return – is unclear and CMMPA should consider revising this section to read as follows: “The Annual Allocation Factor for Premium Return on Projects Receiving the Hypothetical Capital Structure Return (HCSR) shall be the amount included on Attachment O-CMMPA, Page 4, Line 30d, Column 5.” MISO TOs also state that the Applicants should delete, for purposes of consistency, the entire second line on page 1 of Attachment O-CMMPA, and replace it with “Line 1 minus Line 1a (Note B).” MISO TOs also maintain that the Applicants should modify Note A on page 2 of Attachment O-CMMPA, for clarity and consistency purposes to read “less any prefunded AFUDC, if applicable.” As a result, Note A will read “Gross Transmission Plant is that identified on page 2 line 2 of Attachment O-CMMPA Agency and includes any sub lines 2a or 2b etc. and is inclusive of any CWIP included in rate base when authorized by FERC order less any prefunded AFUDC, if applicable Transmission Accumulated Depreciation comports with this Note A and Note B below.” MISO TOs also note that there is no Note D in the Attachment MM-CMMPA template. For clarity, CMMPA should modify the Attachment MM-CMMPA template, page 2 to include a reference for Note D and state “Note intentionally left blank.” In addition, in Note E, CMMPA should consider changing the reference to Attachment O to Attachment O-CMMPA for consistency with the other notes.<sup>45</sup>

33. In addition to the above recommended revisions, MISO TOs also request that the Commission require the Applicants to revise Attachments O-CMMPA and MM-CMMPA to conform to the recently filed changes to MISO’s *pro forma* Attachments O and MM to ensure a consistent application of these rates formulas and appropriate cost recover.<sup>46</sup>

### 3. Answer

34. With regard to MISO TOs suggested modifications to the Attachment O-CMMPA and Attachment MM-CMMPA templates, the Applicants agree to make the suggested changes and conform the templates to the recently filed revisions to the *pro forma* Attachments O and MM.<sup>47</sup>

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 2, 9-10. MISO TOs state that MISO and its transmission owners filed revisions to Attachment O on October 31, 2011 in Docket No. ER12-297-000, and filed revisions to Attachment MM on November 1, 2011 in Docket No. ER12-312-000. *Id.* at 10 n.16.

<sup>47</sup> Applicants Answer at 23.

#### 4. Commission Determination

35. We agree with MISO TOs that the current version of Attachment O-CMMPA and Attachment MM-CMMPA require modification and additional changes. In addition, MISO and the Midwest ISO Transmission Owners have recently filed changes to Attachment-O and Attachment-MM.<sup>48</sup> As CMMPA uses the MISO's general Attachment O Utilizing FERC Form 1 Data and Attachment MM as the basis for its company-specific attachments, additional revisions to Attachment O-CMMPA and Attachment MM-CMMPA are necessary to conform to these changes.

36. Accordingly, we conditionally accept MISO's proposed revisions to Attachment O-CMMPA and the new Attachment MM-CMMPA, and direct MISO, on behalf of the Applicants, to file revisions to Attachment O-CMMPA and Attachment MM-CMMPA to conform to the current templates on file with the Commission within 30 days of the date of this order and to make each of the suggested revisions proposed by MISO TOs, as the Applicants agreed to make in their answer.

37. MISO requests that Commission make the proposed Tariff revisions effective on March 21, 2011 because this is the effective date granted by the Commission in the May 13 Order for other requested incentives.<sup>49</sup> Because the Applicants and MISO failed to demonstrate good cause that would permit the requested earlier effective date,<sup>50</sup> we deny the requested March 21, 2011 effective date and, pursuant to section 205(d) of the FPA,<sup>51</sup> make them effective January 16, 2012, following 60 days' notice from the date of filing.

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<sup>48</sup> Specifically, on October 31, 2011, MISO and MISO TOs filed in Docket No. ER12-297-000 revisions to Attachment O to provide a number of clarifications regarding the calculation of revenue requirements and correct errors that exist in the current Attachment O rate formulas on file with the Commission. On November 1, 2011, MISO and MISO TOs filed in Docket No. ER12-312-000 revisions to Attachment MM to provide for a more equitable allocation of certain O&M expenses associated with MVPs. The filing modified Attachment MM, section 3 and the corresponding formula template to provide separate allocators for the recovery of Transmission O&M Expense and Other O&M Expense.

<sup>49</sup> MISO Transmittal Letter at 2.

<sup>50</sup> *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,339, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

<sup>51</sup> 16 U.S.C. § 824d(d).

38. With regard to the Applicants' proposed accounting treatment, in the May 13 Order, the Commission made certain determinations with respect to the accounting for the Brookings Project costs because CMMPA agreed to provide MISO with a FERC Form No. 1 that contains cost data developed in accordance with the Commission's Uniform System of Accounts (USofA).<sup>52</sup> We find that, based upon on the USofA requirements, the Applicants' proposed accounting for the regulatory asset account, carrying charge, and related amortization is not in accordance with the Commission's accounting regulations.

39. Order No. 552 established the accounting for regulatory assets and liabilities.<sup>53</sup> The Commission stated that one of the major changes from the accounting proposed in the notice of proposed rulemaking (NOPR) in that proceeding was the elimination of the NOPR's two-step process of accounting for regulator assets and liabilities in favor of a one-step process. This change results in charging the regulatory asset account directly with the costs being deferred. Additionally, the Commission's accounting regulations provide for the use of Accounts 407.3 and 407.4 in limited circumstances when the specific identification of the particular source of the regulatory asset cannot not be made, such as in plant phase-ins, rate moderate plans, or rate levelization plans.<sup>54</sup> These limited circumstances are not present in this case and, therefore, the use of Account 407.4 by CMMPA to record a regulatory asset is inappropriate.

40. In order to properly report these transactions in the FERC Form No. 1, CMMPA must establish the regulatory asset by directly charging Account 182.3 with the cost deferrals. CMMPA must record all associated carrying charges by debiting Account 182.3 with concurrent credits to Account 421, Miscellaneous Nonoperating Income.<sup>55</sup> Finally, the amortization of the cost deferrals (including the deferred carrying charge) must be accounted for by crediting Account 182.3 and debiting the appropriate O&M

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<sup>52</sup> See May 13 Order, 135 FERC ¶ 61,131 at P 23-27.

<sup>53</sup> *Revisions to Uniform System of Accounts to Account for Allowances Under the Clean Air Act Amendments of 1990 and Regulatory-Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. & Regs. ¶ 30,967 (1993).

<sup>54</sup> See 18 C.F.R. Part 101 (2011), Account 182.3 (Other Regulatory Assets), Paragraph B.

<sup>55</sup> See Order No. 552, FERC Stats. & Regs. ¶ 30,967 at 30,825 (requiring that deferred returns and/or carrying charges accrued on regulatory assets be credited to Account 421, Miscellaneous Nonoperating Income).

expense account. This accounting will ensure that amounts are properly reported in the FERC Form No. 1 for MISO tariff billing purposes.

The Commission orders:

(A) MISO's proposed Tariff revisions are hereby accepted for filing, subject to the compliance filing ordered below, effective January 16, 2012, as discussed in the body of this order.

(B) MISO is hereby directed to make a compliance filing, due within 30 days of the date of this order, as discussed in the body of this order.

(C) MISO's request on behalf of the Applicants for the regulatory asset incentive is hereby granted, effective January 16, 2012, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.